

William R. Seligmann SBN 108129
 bill@southbaylaw.com
 Law Offices of William R. Seligmann
 Atchison, Barisone, Condotti & Kovacevich, Of Counsel
 Mailing Address:
 PO Box 481
 Santa Cruz, California 95061

Physical Address:
 333 Church Street, Suite A
 Santa Cruz, California 95060
 (831) 423-8383
 Fax (831)438-0104

Richard C. Bolanos, Bar No. 111343
 rbolanos@lcwlegal.com
 Gurinder S. Grewal, Bar No. 277975
 ggrewal@lcwlegal.com
 LIEBERT CASSIDY WHITMORE
 A Professional Law Corporation
 153 Townsend Street, Suite 520
 San Francisco, CA 94107

Telephone: (415) 512-3000
 Facsimile: (415) 856-0306

Attorneys for Defendants
 CITY OF CAMPBELL, DANIEL RICH,
 GREG FINCH, DAN LIVINGSTON, and
 RICHARD SHIPMAN

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT

SAN JOSE DIVISION

SAMMY CUEVAS,

Plaintiff,

v.

CITY OF CAMPBELL; DANIEL RICH in
 his official capacity as City Manager;
 GREG FINCH in his official capacity as
 Chief of Police; DAN LIVINGSTON
 individually and in his official capacity as a
 Sergeant of Campbell Police; RICHARD
 SHIPMAN individually and in his official
 capacity as a Sergeant of Campbell Police;
 and DOES 1-25, inclusive,

Defendants.

Case No. CV12-03087 EJD

**STIPULATION AND [PROPOSED]
 ORDER TO STAY CASE**

[Civil L.R. 6-2, 7-1(a)(5), 7-12]

Courtroom: 4
 Judge: Hon. Edward J. Davila

STIPULATION

In furtherance of judicial economy and to avoid potentially unnecessary expense, the undersigned counsel for and on behalf of the parties named below wish to stay all proceedings in this case ("Civil Action") pending a final outcome in Plaintiff's Writ of Administrative Mandamus ("Writ"), filed in Santa Clara County Superior Court, Case No. 1-12-CV-220122. Accordingly, Plaintiff SAMMY CUEVAS ("Plaintiff") and Defendants CITY OF CAMPBELL, DANIEL RICH, GREG FINCH, DAN LIVINGSTON, and RICHARD SHIPMAN ("Defendants") by and through their respective counsels (collectively referred to as "the parties") hereby STIPULATE and AGREE as follows:

WHEREAS Plaintiff filed a petition in Santa Clara County Superior Court to obtain a Writ of Administrative Mandamus on March 6, 2012;

WHEREAS on May 9, 2012 Plaintiff filed this separate Civil Action in Santa Clara County Superior Court alleging 42 U.S.C. Section 1983 violations and Breach of Contract;

WHEREAS many of the same underlying facts and legal issues are presented in the Writ and the Civil Action;

WHEREAS Defendants removed the Civil Action to this Court under federal question jurisdiction;

WHEREAS Plaintiff filed a first amended complaint in the Civil Action on October 30, 2012;

WHEREAS Defendants filed a Motion to Stay or in the alternative Motion to Dismiss the Civil Action on November 13, 2012;

WHEREAS any Opposition by Plaintiff to the Motion to Stay and Motion to Dismiss are due on or about November 27, 2012;

WHEREAS any Reply by Defendants to any Opposition by Plaintiff to the Motion to Stay and Motion to Dismiss would be due on or about December 4, 2012;

WHEREAS the hearing on the Motion to Stay and Motion to Dismiss is set for February 15, 2013;

WHEREAS the parties acknowledge that the earliest date a decision can become final in

1 the Writ is when the sixty day window to appeal the Superior Court decision on the Writ has
2 expired, on or about January 6, 2013 pursuant to Cal. Rules of Ct. 8.104;

3 WHEREAS the parties also acknowledge that a final decision can come much later than
4 January 6, 2013 should Plaintiff appeal the Superior Court decision on the Writ to the California
5 Court of Appeal and on to the California Supreme Court;

6 WHEREAS the parties wish to stay all proceedings in this matter at the present time,
7 including hearings, briefings, appearance, and any other deadlines imposed by law or the Court,
8 pending a final decision being entered in the related Writ, which is economically and judicially
9 efficient;

10 WHEREAS the parties further stipulate and agree that the extension requested herein is
11 not requested for the purposes of delay and will not result in any prejudice to the parties or to the
12 Court;

13 **IT IS THEREFORE STIPULATED AND AGREED** by Plaintiff and Defendants, by
14 and through their respective counsel, and the Court is respectfully requested to order that:

- 15 1. This action is hereby stayed until such a date as a final decision on the Writ is
16 entered;
- 17 2. The deadline for Plaintiff to file his Opposition to the Motion to Dismiss is
18 extended to two (2) calendar weeks after the date on which a final decision is
19 entered on the Writ and pursuant to Local Rule 7-3(a);
- 20 3. The deadline for Defendants to file their Reply to Plaintiff's Opposition shall be
21 pursuant to Local Rule 7-3(c);
- 22 4. The current hearing on the Motion to Dismiss shall be vacated, and new date shall
23 be requested by Defendants when a final decision is entered on the Writ.

24
25 **IT IS SO STIPULATED.**
26
27
28

1 Dated: November 26, 2012

LIEBERT CASSIDY WHITMORE

2
3 By:

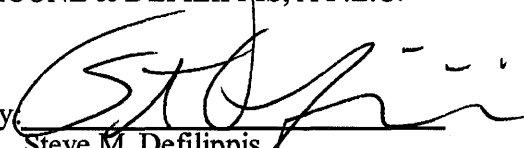

Richard C. Bolanos
Gurinder S. Grewal

4
5 Attorneys for Defendant
6 CITY OF CAMPBELL, DANIEL RICH,
7 GREG FINCH, DAN LIVINGSTON, and
8 RICHARD SHIPMAN

9 Dated: November 26, 2012

PICONE & DEFILIPPIS, A P.L.C.

10
11 By:


Steve M. Defilippis
Attorney for Plaintiff,
SAMMY CUEVAS

LIEBERT CASSIDY WHITMORE
A Professional Law Corporation
153 Townsend Street, Suite 520
San Francisco, CA 94107

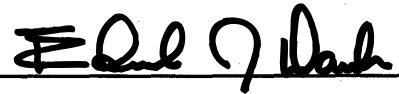
[PROPOSED] ORDER

Pursuant to the foregoing stipulation, and good cause appearing, I hereby Order that:

1. This action is hereby stayed until such a date as a final decision is entered on the Writ of Administrative Mandamus, Santa Clara County Superior Court Case No. 1-12-CV-220122; save for the filing of the statement ordered herein;
2. Defendants' Motion to Stay (Docket Item No. 27) is TERMINATED AS MOOT. Defendants' Motion to Dismiss (Docket Item No. 29) is TERMINATED WITHOUT PREJUDICE to being re-noticed and re-filed if necessary upon expiration of the stay.
3. On or before January 11, 2013, the parties shall file a Joint Status Statement which provides, inter alia, an update as to the status of the state court proceeding and addresses the continuing need for a stay of this action.

IT IS SO ORDERED.

DATED: November 27, 2012



The Honorable Edward J. Davila
United States District Court Judge

LIEBERT CASSIDY WHITMORE
A Professional Law Corporation
153 Townsend Street, Suite 520
San Francisco, CA 94107